IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Mat.Appeal.No. 225 of 2004(E)

OP.620/1997 of FAMILY COURT,TRIVANDRUM
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PETITIONER: APPELLANT/RESPONDENT:

JYOTHI KUMAR, S/O. AYYAPPAN NAIR,
SHANTHI BHAVAN, CHERIYAKULAM, VEERANKAVU P.O.,
KATTAKKADA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.D.SAJEEV
SRI.K.R.HARIDAS

RESPONDENTS: PETITIONER:

PRASANNA KUMARI, D/O. MANIKANTAN NAIR,
ANIL COTTAGE, CVR PURAM, ARAYAOOR,
NEYYATTINKARA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

Mat.Appeal No. 225 of 2004

Dated this the 30th day of October 2007

JUDGMENT

Harun-Ul-Rashid ,J

This appeal is filed by the respondent-husband against the decree and judgment dated 29-04-2004 in O.P No. 620/1997 on the file of the Family court , Thiruvananthapuram. The Original petition was filed by the respondent claiming maintenance and for recovery of money The appellant is the petitioner in O.P No. 27/1997 on the file of the same court seeking divorce which was decreed.

2. The facts of the case in brief as follows:

The marriage between the appellant and the respondent was solemnized on 7-1-1996 as per the custom prevaling in the Hindu Community. After the marriage they lived together as husband and wife for 5 months in the house of the appellant. According to the appellant while they were living together symptoms of venereal disease appeared in the body of the respondent and therefore she was treated in the hospital. Even after 7 months of the treatment the disease was not cured. So the treatment continued for several months. According to the appellant the respondent is suffering from venereal disease in a communicable form and therefore he reasonably apprehends that the disease of the respondent

will be transmitted to him.. The appellant has also alleged that the respondent compelled him to have sexual intercourse against his will. The appellant believes that any sexual intercourse with the respondent would be harmful and injurious to both of his life and health. According to him therefore it has become impossible for him to live with the respondent and the marriage of the petitioner and the respondent, is irretrievably broken.

3. The respondent-wife denied all the allegations. She contended that from the date of marriage i.e from 7-1-1996 the respondent and the appellant have been residing together till 25-5-1996. Even during this period from 12-2-1996 to 25-5-1996 the respondent was totally bed ridden due to the injuries caused in a motor accident by a delibrate act of the husband in an attempt to kill her. The respondent is not suffering from any venereal disease as alleged. On 25-5-1996 the respondent was forced to escape from the matrimonial house to save her life . The appellant is in possession of her property worth Rs. 2,60,000/- besides Rs.1,00,000/- paid to him by cash. The respondent further contended that the appellant humiliated her and her family members and spread the propaganda that the respondent is suffering from venereal disease. During the course of the marital life the appellant and the respondent used to have sexual intercourse regularly. Had the respondent been suffering from any venereal disease the appellant would have contacted the said disease on 7-1-1996.i.e the date of the marriage itself. The greed of the appellant for

money led to the breakdown of the marital life of the petitioner and the respondent.

4. The respondent further contended that the appellant was employed in gulf countries. Subsequent to the marriage the appellant did not go abroad. At the time of the marriage the respondent had given 50 sovereigns of gold ornaments and 20 cents of land and Rs.1,00,000/- was paid as pocket money to the appellant. Further a gold chain weighing 4 sovereigns and a gold ring weighing 1 sovereign are also given to the respondent. Further the appellant had presentation items worth Rs.30,000/-. All these were appropriated by the respondent for his own purpose. The respondent was allowed to wear only thalimala and 2 ear drops and a bangle and the rest of the gold ornaments were kept in the custody of the appellant and his mother. She further alleged that when she was bedridden due to a motor accident the appellant spread the propaganda that the respondent is suffering from venereal disease.

5. The respondent also pleaded that when she was forced to leave the matrimonial home on 25-5-1996 she was wearing the thalimala of 8 grams, one bangle of 8 grams and one set of ear drops of 4 grams. The rest of the gold ornaments weighing 47 $^{1}/_{2}$ sovereigns were in the possession of the appellant. Further the presentation items worth Rs. 30,000/- are also in his custody and the respondent left the matrimonial home with the only clothes she was wearing. All clothing articles including

costly wedding sari worth Rs. 20,000/- are in the custody of the appellant.

6. The respondent contended that the appellant was a driver in gulf countries for 10 years. The appellant was maintaining fixed deposits in different bank including N.R.I accounts. His monthly income by way of interest is Rs.10,000/- From his present employment as a driver he earns Rs.3,000/- per month. The respondent demands Rs.3,000/- a maintenance allowance. O.P No. 620/1997 was filed before the Family court by the respondent claiming the value of 52.5 sovereigns of gold ornaments including 5 sovereigns of gold ornaments given to the appellant by the parents of the respondent or its value, Rs. 2,10,000/- and also Rs.1,00,000/- given as pocket money. There is a further prayer for recovery of Rs. 20,000/- being the value of articles kept in the custody of the appellant. She claimed maintenance allowance at the rate of Rs.3,000/- per month and arrears of maintenance to the tune of Rs.42,000/- from 25-5-1996.

7. The appellant alleged that he is not at all in possession of any of the gold ornaments and he has not received Rs.1,00,000/- as pocket money and the respondent was in full control over all the movables and gold ornaments belonging to her. O.P 620/1997 was filed as a counter blast to O.P 27/1997.

8. The two original petitions are consolidated and jointly tried by the Family court. During the course of trial, the respondent also deposed that she is ready for divorce provided the appellant is ready to return the gold ornaments or its value and money received by him from her parents. The Family court on evidence found that the respondent is suffering from veneral wart.

9. The Family court after considering the entire evidience on record held that the respondent after leaving her matrimonial home, went to her own house on account of an injury sustained by her due to an accident. The Family court on facts held that there is no possibility for any re-union between the parties and that their marital tie has irretrievably broken.

10. In the circumstances the Family court held that divorce is the only alternative open to both the parties and therefore a decree for divorce is granted in favour of the respondent. The judgment and decree passed in O.P 27/1997 has become final. There was no appeal.

11. In O.P 620/1997 the Family court after evaluating all the evidence on record held that the appellant shall give maintenance at the rate of Rs.500/- per month to the respondent with effect from the date of the petition and also allowed arrears of mintenance at this rate with effect from 25-5-1996 till the date of the Original petition and the respondent is

further allowed to recover Rs. 1,00,000/- and 5 sovereigns of gold ornaments from the appellant.

12. The evidences tendered by the appellant-husband as PW1 and respondent-wife as CPW1 are examined in detail by the Family court. The Family court noted the fact that the appellant-husband did not pay any maintenance allowance to his wife after 25-5-1996 and that she was compelled to leave her matrimonial home on account of the negligence and indifferent attitude on the part of the husband. After taking into consideration all the attendance circumstances the court below took the view that Rs.500/- per month is a reasonable amount to be fixed as maintenance allowance and also further held that she is entitled to recover arrears of maintenance from 25-5-1996. Going by the evidence of PW1 and CPW1 and attendance circumstances, we are of the view that the reasons stated in support of the said finding of the Family court are legal and valid. Before the Family court the appellant as PW1 deposed that he is ready to give back the gold chain and a ring given to him by the respondent. The Family court relied on evidences tendered by CPWs 2 to 4 in detail. It is convincingly proved that there is entrustment of Rs.1,00,000/- to the appellant in connection with the marriage and therefore the finding that the appellant-husband is liable to return this amount to the respondent is reasonable and supported by evidence on record.

13. The Family court on evidence held that there is no evidence to substantiate the respondent's contention that 52.5 sovereigns of gold ornaments was entrusted with the appellant at the time of marriage. The finding of the Family court that the respondent is bound to return Rs.1,00,000/- received from the respondent as pocket money and 5 sovereign of gold ornaments, are based on solid evidence. The Family court analysed in detail the entire facts and circumstances and allowed a part of the claim of the respondent. The findings are legal and valid and therefore warrants no interference.

14. In the result, we find that there is no merit in the appeal. Therefore the appeal fails and hence dismissed There will be no order as to costs.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

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